(2)

No. 03-976

Supreme Court, U.S.
FILED
MAR 15 2004
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

LTC DONALD SULLIVAN and
SP4 JEFFREY S. SULLIVAN,
Petitioners, Pro Se

V

UNITED STATES OF AMERICA,
HONORABLE GEORGE W. BUSH, President, HONORABLE JOEL HEFLEY, Chairman, House Committee on Official Conduct, HONORABLE HENRY HYDE, Chairman, House Committee on International Affairs, JOHN BARGO, Chief-of-Staff, House Committee on Official Conduct, and 535 John Does,
Respondents

On Petition for Writ of Certiorari
To The United States Court of Appeals For the Fourth Circuit

PETITION FOR REHEARING

LTC Donald Sullivan and SP4 Jeffrey S. Sullivan
PO Box 3061
Wilmington, NC 28406
910-617-2559
Pro Se

TABLE OF CONTENTS

Table of Authorities Cited iii

Reasons for Granting the Petition for Rehearing 1

I. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for Writ of Certiorari, to wit: The Survivability of the Constitution of the United States, and thus the United States itself, is in peril due to the actions of the Legislative and Executive branches (and the inaction of the Judicial branch) in this matter before the Court.....1

II. The Court should consider and grant this Petition for Rehearing because *Lawrence, et al v. Texas* constitutes an "intervening circumstance[] of...substantial effect" in that the Supreme Court of the United States, by its own decision, placed the constitutions of other nations above the United States Constitution, thereby undermining its authority and its value as a legal document and threatening its very survival, and thus threatening the very survival of the United States of America as a free constitutional republic. 3

III. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for Writ of Certiorari, to wit: Am 16 Jur 2 requires that the partial unconstitutionality of Public Law 107-243, House Joint Resolution 114, Resolution To authorize the use of United States

Armed Forces against Iraq"; 39 Stat. 166, National Defense Act of 1916, as amended in 1933; and 50 USC 1543(a), War Powers Resolution of 1973, render those sections of said laws void and as if they had never been written. 5

Conclusion 9

TABLE OF AUTHORITIES CITED

CASES — PAGE

Bowers v. Hardwick, 478 U.S. 186 (1986)..... 4

Dudgeon v. United Kingdom, Eur. Ct. HR, Sept 25, (2001) 4

Lawrence, et al v. Texas, 000 U.S. 02-102 (2003)... 3

Modinos v. Cyprus, 199 Eur. Ct. HR, (1993) 4

Norris v. Ireland, 142 Eur. Ct. HR, (1988)..... 4

STATUTES AND RULES

Constitutional Law 16 Am Jur 2d - Effect of Totally or Partially Unconstitutional Statutes 6

39 Stat. 166 - National Defense Act of 1916, as amended in 1933 6

50 U.S.C. 1543(a) - War Powers Resolution of (1973) 6

PL 107-243 (HJR 114) - Resolution to Authorize the Use of United States Armed Forces Against Iraq (2003) 6

OTHER

Associated Press Release of March 5, 2004 - "Late Justice's Papers Shed New Light on Roe v. Wade" 1

Reasons For Granting The Petition For Rehearing

I. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for Writ of Certiorari, to wit: The Survivability of the Constitution of the United States, and thus the United States itself, is in peril due to the actions of the Legislative and Executive branches (and the inaction of the Judicial branch) in this matter before the Court.

Whereas, the obvious intent of the Petitioners in this matter is to reinstate that which has been lost, the authority of the United States Constitution as the "Supreme Law of the Land", it appears the Supreme Court of the United States would rather have that Constitution left to be "overwhelmed by events and by time" as proposed by Respondent Hyde. Such was the case in 1992 during discussions regarding whether or not to hear *Planned Parenthood v. Casey* (505 U.S. 833, 1992). According to Justice Blackmun, "The obvious reason (was to avoid) the political repercussions of a decision by this court in an election year"; and "The court risks its reputation if it makes such political choices" (Quoting the Associated Press, 3/5/04, "Late Justice's papers shed new light on Roe v. Wade").

Obviously, the evidence presented in the subject petition combined with the evidence available to this Court and the public at large provides a *prima facie* case for the granting of a writ of certiorari in this matter and the subsequent hearing of the case by the Court. The Respondent members of the Legislative and Executive have completely disregarded the tenets of the Constitution in advancing and waging numerous acts of war against foreign nations in the past sixty years, not limited to those presented to the Court in the petition, without exercising the constitutional safeguards provided by our Founders. For the Court

to deny certiorari in this matter places the Court in a position of duplicity and collusion with those who would have the Constitution disregarded. It would appear so, merely because to do otherwise would result in a definite effect on the elections of 2004, an effect most likely detrimental to the campaigns of those parties directly involved in this fraud against the American people and the several States of the Union, the majority of which are Republicans, which Petitioners also claim to be.

Petitioners' own experience has shown the majority of the members of the legal profession are of the opinion the United States Constitution is "no longer applicable", "obsolete", "too open to interpretation", "anachronistic", or "should be completely rewritten". It is certain this lesson was learned while these individuals attended their law schools of choice, most of which are, upon information and belief, funded and directed primarily by enemies of the Constitution, those who would like nothing better than to have an excuse to rewrite it. Rumor has it the new version has already been approved and awaits only the demise, or the scuttling, of the one we already have. Even Jay Leno, whom some have said tongue in cheek is the purest source of real news, has stated in his monologue, "I hear Mr. Bremer and the Iraqis are trying to find a good constitution. I say, why not give them ours. We haven't used it in 200 years!" There is more than an ounce of truth in this comedic comment.

Petitioners, like all other active and retired federal agents including the Court, take an oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." This petition is all about the petitioners defending that oath. For the Court to deny petitioners' petition is tantamount to its sanctioning the unlawful acts of those Respondents who violated their oaths and who knowingly have placed our Constitution and our nation in its greatest peril since the War of Northern Aggression in 1861.

II. The Court should consider and grant this Petition for Rehearing because Lawrence, et al v. Texas constitutes an "intervening circumstance[] of...substantial effect" in that the Supreme Court of the United States, by its own majority decision, placed the constitutions of other nations above the United States Constitution, thereby undermining its authority and its value as a legal document and threatening its very survival, thus threatening the very survival of the United States of America as a free constitutional republic.

In *Lawrence, et al v. Texas* (000 U.S. 02-102, 2003), the Supreme Court of the United States failed to "support and defend the Constitution of the United States" in its majority ruling by:

1. Usurping the Constitutional power of the Legislature - The Constitution establishes that the elected branches are the only public policy making bodies in the nation. The current Court has shown disdain for the original plan and exerts both its force and will by having become, through judicial fiat, the dominant policy-making branch of government, rather than a branch dedicated to the mere interpretation of the law.

2. Violating the standards of America's national charter- The Declaration of Independence declares our national character having for its basis "the Laws of Nature and of Nature's God". The Court has previously affirmed that the Constitution cannot be properly interpreted apart from the values established in the Declaration of Independence. The ruling in *Lawrence* tears at the fabric of the morality of our nation, a morality based on those very same "Laws of Nature and of Nature's God".

3. Addressing issues beyond the jurisdiction appropriate for the Court - Moral decisions were intended to be made by the people well below the federal level. Witness for this are the Ninth and Tenth Amendments to the Constitution. The Court in the *Lawrence* decision has intruded into areas reserved for the people and the States.

4. Violating the "Fundamental Principle of the Constitution" - In the words of President Washington, "[T]he fundamental principle of our Constitution...enjoins that the will of the majority shall prevail". In *Lawrence*, the Court has forced the will of a small minority upon all the rest of the nation, a minority, historically and traditionally, whose recognition has resulted in the ultimate demise of its civilization.

5. Placing the Constitutions of other nations above the United States Constitution - As stated in the majority opinion,

"To the extent *Bowers* [*v. Hardwick*, 478 U.S. 186, 1986] relied on values we share with a wider civilization, it should be noted that the reasoning and holding in *Bowers* have been rejected elsewhere. The European Court of Human Rights has followed not *Bowers*, but its own decision in *Dudgeon v. United Kingdom* (Eur Ct. HR, Sept 25, 2001); *Modinos v. Cyprus*, 259 Eur. Ct. HR (1993); *Norris v. Ireland*, 142 Eur Ct. HR (1988). Other nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. See 'Brief for Mary Robinson et al'. The right petitioners seek in this case has been accepted as an integral part of

> human freedom in many other countries." (emphasis added)

The attitude of the Court that the United States should abandon its own position in Bowers and the position of our Founders in the "Articles of Incorporation" (Declaration of Independence) and the "Corporate By-Laws" (the Constitution) in deference to the depraved conduct of "other nations", is extremely frightening and bodes doom for any reasonable interpretation of the "Supreme Law of the Land" in the future by this Court. That this Court would so cavalierly subordinate that Constitution which it has sworn a sacred oath "to support and defend against all enemies foreign and domestic, and bear true faith and allegiance to the same" to those of "other nations", is not only an unconscionable act, but is an act of treason and sedition against the United States. It must be recognized as such and dealt with as such. In this matter, above all others, it is obvious to the nations at large that the "Emperor has no clothes", although our own people are having difficulty seeing and admitting it to themselves.

For the Court not to grant this Petition for Rehearing would reinforce the conspiratorial demise of the Constitution. By not demanding the proper allocation of those authorities defined in the Constitution which have been illegally transferred by the Legislative and illegally confiscated by the Executive by processes ignored by the Judicial (witness the attitude of the Court as described in Lawrence coupled with its failure to provide judicial review when it is so obviously required), we allow the Constitution of "We the People" to become a mere hologram of liberty, which must soon be replaced by another, less friendly, internationalist document. This new document will not protect the rights and privileges of the people, but will instead usurp those rights and use them to the people's detriment, providing them then only by license.

III. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial

ground not previously presented" in the Petition for Writ of Certiorari, to wit: Am Jur 16 2d requires that the partial unconstitutionality of Public Law 107-243, House Joint Resolution 114, Resolution To authorize the use of United States Armed Forces against Iraq"; 39 Stat. 166, National Defense Act of 1916, as amended in 1933; and 50 USC 1543(a), War Powers Resolution of 1973, render those sections of said laws void and as if they had never been written.

Constitutional Law 16 Am Jur 2d, *Effect of Totally or Partially Unconstitutional Statutes*, Part 1, Total Unconstitutionality, which was not presented to the Court in the petition for writ of certiorari, states as follows:

> "The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose, since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it an unconstitutional law, in legal contemplation is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. No repeal of such an enactment is necessary."

Therefore, it is a violation of federal law for this Court to allow these unconstitutional laws to be allowed to continue as legal authority in the United States as presented in the petition for a writ of certiorari. Certainly the recognition of their unconstitutionality by this court will have far-reaching ramifications, but to do otherwise is to sanction the continued unlawful disregard for the Constitution and to weaken the United States itself. One needs merely to witness the distress and disorder to which the Union has been subjected as the result of the most recent actions by the

Executive under the auspices of these unlawful acts of the legislature to understand the ultimate potential harm to its survivability. The unilateral use of our military forces by the Executive has literally placed the United States in the undesirable role as an imperialistic outlaw state worthy of the trust and friendship of none. Our military might is currently engaged in theaters where it is completely surrounded by avowed enemies of the United States. The slightest miscalculation on the part of our military or political commanders could spell disaster for us all.

Further, the employment of these unconstitutional laws by said Executive has stressed and stretched the military resources of the United States up to and beyond the breaking point. With over sixty per-cent of the total military on assignments in at least one hundred twenty countries at present, including undeclared ongoing wars in at least three theaters simultaneously, the military is overwhelmed. The troops are being deployed as much as three out of four years to foreign assignments away from their families, and not in the defense of their own country. The United States is no longer even in compliance with the unconstitutional "War Powers Act", *supra.* The result: Disenchantment of the services such that retention and recruitment are being seriously harmed, condemning the "volunteer" military and forcing the virtually outlaw government of the United States to reinstate the draft. Ultimately, the result will be a nation totally devoted to arming and staffing its military because we will have caused the entire world to justly resent and despise us. We cannot survive this trauma, but we can place the blame directly upon the Legislative and Executive branches' (in the persons of the Respondents) utter disregard and ignorance of the spirit, the intent and the letter of the Constitution.

Conclusion

For the reasons stated above, the petition for rehearing must be granted. It is imperative this Court take aggressive steps to reinstate the authority of the Constitution of the United States over

the entity which it created, the United States of America. As illustrated in the statements above, the "United States" of the Constitution does not exist in fact, based upon the acts and doctrines as defined by the Legislative, the Executive, and the Judicial branches of government. What remains is merely an evil shadow of what was initiated. Unless this Court acts to save it, our Constitution must go asunder. It is now as it was then:

> "Governments are instituted among Men, deriving their just powers from the consent of the governed, - -That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." (Declaration of Independence, 1776)

It is within the power of this Court to re-establish that Government laid on the foundations of principle and organization which seemed right in 1787 and seems just as right today. Failure to do this will result in this once great nation being subdued by her enemies and relegated to history, unless the People are prepared to exercise that authority described by Thomas Jefferson in the Declaration above. Unfortunately, the People are like sheep and will more likely react in the manner this same Mr. Jefferson described in his comments to the Virginia Legislature in 1784, just one year after the War for Independence had been won:

> "Our rulers will become corrupt, our People careless. The time for fixing every essential right on a legal basis is while our rulers are honest and ourselves united. From the conclusion of this war, we shall be going downhill. It will not then be necessary to resort every moment to the People for support. They will be forgotten, therefore, and their

> rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which will not be knocked off at the conclusion of the war, will remain on as long, will be made heavier and heavier, 'til our rights shall revive or expire in a convulsion."

Regardless which path we may take, the opportunity is before this Court to move this nation in the proper direction back to constitutional authority and responsible government as dictated by the Founders. By this Court's failure to do so, that wrongdoing will affect no one man or woman, yet it will affect all men and women. If left unheeded it will not be without effect on our children yet unborn. The codes and traditions of the Declaration of Independence and the Constitution are the pillars of our people, and these pillars may not be struck with impunity. Though they be strong and a single blow will not damage them mortally, many blows will bring down even the strongest pillar. A single blow left unheeded encourages another. A deed disregarded is a deed encouraged. The petitioners pray this Honorable Court will not disregard and encourage these deeds committed by the Respondents by further inaction. To do so can only be at the great peril of us all. The Court must settle once and for all time these questions of law by granting this petition for rehearing, so these unconstitutional actions shall never more be allowed to threaten our Constitution and the great constitutional republic for which it stands, one nation, under God.

CERTIFICATE

I do certify, pursuant to Supreme Court Rule 44.2, that this petition for rehearing is restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, and that it is presented in good faith and not for delay.

Jeffrey S. Sullivan, Petitioner, *Pro Se*
SP4, US Army
D co, 1/130th Avn Bn
North Carolina National Guard
C/o 2025 National Guard Drive
Morrisville, NC 27560-0506

Donald Sullivan, Petitioner, *Pro Se*
Lt. Col, USAFR (R)
PO Box 3061
Wilmington, NC 28406
910-617-2559